

ORIGINAL

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Amendment of Section 73.202(b))

Table of Allotments)

New FM Broadcast Station)

(Westfield, New York))

MB Docket No. _____

RM - _____

FILED/ACCEPTED

To: Office of the Secretary
Attn: Chief, Audio Division
Media Bureau

JUN - 3 2011

Federal Communications Commission
Office of the Secretary

PETITION FOR RULEMAKING

Connoisseur Media of Erie, LLC ("Connoisseur"), by its attorneys, hereby petitions the Federal Communications Commission to initiate a rulemaking proceeding to amend Section 73.202(b) of the Commission's Rules, the FM Table of Allotments, to add the following allotment:

CITY _____ CHANNEL _____

Westfield, New York 265A

Simultaneously with the filing of this Petition for Rulemaking, Connoisseur has also filed a complete FCC Form 301 application seeking authorization for this proposed new allotment consistent with the Commission's Rules. In addition, by a separately filed application, Connoisseur has sought to change the operating channel of WRKT(FM), North East, Pennsylvania, from Channel 265 to Channel 285 in order to permit the allocation of Channel 265 at Westfield, New York, as proposed herein.¹ See FCC File No. BPH-20110509AAL. As that channel change is the basis for the new allocation proposed by this Petition, the WRKT(FM)

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minor modification application and this rule making proposal should be considered together as a single, related hybrid proceeding.

As illustrated in the Technical Statement prepared by broadcast technical consultants Graham Brock, Inc., attached hereto as Exhibit 1, Channel 265A can be assigned to the community of Westfield, New York at the following reference coordinates, with a site restriction to 3.5 kilometers west-southwest of the community. From the proposed allocation reference site, Channel 265A meets the Commission's minimum distance separation requirements of Section 73.207 to all domestic licensed, proposed, or applied for facilities, but would need to be coordinated with Canada as a specially negotiated shortspaced allotment, as detailed in the attached Technical Statement. Additionally, at the following reference coordinates, based on the proposed effective radiated power and antenna height above average terrain, the entire community of Westfield would be covered by the new station's proposed 70 dBu contour.

COORDINATES (NAD27)

CHANNEL

42 18 51.0 NL

265A

79 37 4.0 WL

Westfield, New York is a community for allotment purposes. Westfield was established in 1823, and has a population of 5,232 persons as of the 2000 U.S. Census.² The town is governed by a Town Supervisor and a Town Council. It has its own real estate assessor, tax collector, and Town Court, administered by two justices.³ Westfield is home to schools, a library, and a museum and historical society. The community has an established business

Footnote continued from previous page

¹ Connoisseur Media of Erie, LLC is the licensee of WRKT(FM).

² See <http://factfinder.census.gov/>, last visited June 2, 2011.

development corporation and is home to scores of local businesses.⁴ In addition, the Welch Grape Juice Company has a large presence in the town and the surrounding areas have long been involved in the cultivation of grapes. Accordingly, the town is a well-established, defined community that meets the Commission's standards for allotment purposes.

The instant request to amend the FM Table of Allotments would further the Commission's allotment priorities and result in a preferential arrangement of allotments under Section 307(b) of the Communications Act of 1934, as amended,⁵ by bringing a first local service to the community of Westfield, New York, thus advancing Priority Three of the Commission's allotment priorities.⁶ As demonstrated in the attached Technical Statement, a maximum Class A facility would provide service to over 41,000 persons. Further, no community will lose any present or proposed service as a result of this grant.

As mentioned above, consistent with the Commission's procedures, concurrently herewith, Connoisseur has prepared and filed the necessary FCC Form 301 application seeking an original construction permit for this new allotments. Furthermore, in the event that Channel 265A is allotted to Westfield, New York, and competing applications are submitted that are

Footnote continued from previous page

³ See <http://www.townofwestfield.org/government.html#board>, last visited May 19, 2011.

⁴ See, e.g., <http://www.westfieldny.com/westfield-businesses/>, last visited May 19, 2011.

⁵ 47 U.S.C. § 307(b).

⁶ See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982). The four priorities are: (i) first full-time aural reception service to a community; (ii) a second full-time aural reception service to a community; (iii) first local transmission service to a community; and (iv) other public interest factors. The second and third criteria have equal priority. *Id.* at 91. See also *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, 21 FCC Rcd 14212 at ¶ 10 (2006) (Section 307(b) priorities and policies used by Commission since 1982 continue to apply under new application procedures).

mutually exclusive to that of Connoisseur, Connoisseur will participate in an FM auction of the allotments, should one be necessary. Accordingly, Connoisseur respectfully requests that the Commission

adopt the proposed new allocation at Westfield, New York. Approval of this rulemaking will serve the public interest and further the Commission's established allotment priorities.

Respectfully submitted,

CONNOISSEUR MEDIA OF ERIE, LLC

By: 
Brendan Holland
Its Attorney

DAVIS WRIGHT TREMAINE LLP
1919 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20006
(202) 973-4200

Dated: June 3, 2011

EXHIBIT 1

PETITION FOR RULE MAKING
CONNOISSEUR MEDIA OF ERIE, LLC
ALLOT CHANNEL 265A
WESTFIELD, NEW YORK
May 2011

TECHNICAL STATEMENT

1. This technical statement and attached exhibits were prepared on behalf of Connoisseur Media of Erie, LLC ("CME"). CME herein requests the Commission amend §73.202(b) of the rules by allotting Channel 265A to Westfield, New York.¹ CME herein states that, once the Commission allots this proposed channel to Westfield, New York, it will participate in the future auction process, seeking authority to construct the new Westfield, New York facility. It is noted that CME is submitting a companion application for construction permit (FCC Form 301) for the channel.

Proposal

2. Channel 265A can be allotted to Westfield, New York at reference coordinates North Latitude 42° 18' 51" and West Longitude 79° 37' 04", with a site restriction of 3.5 kilometers west-southwest of the community.² This proposed allotment is possible, based on the application for station WRKT to change from Channel 265B1 to Channel 285B1. As denoted on Exhibit #1, from the proposed allocation reference site, Channel 265A meets the Commission's minimum distance separation requirements to all domestic licensed, proposed, or applied for facilities. From the proposed allotment site, Channel 265A does not meet the spacing requirements of the

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- 1) CME is the licensee of a WRKT, Channel 265B1, Northeast, New York. CME has/is submitting a minor change application to change the channel of WRKT from Channel 265B1 to Channel 285B1 at North East, Pennsylvania. This change in channel for WRKT makes Channel 265A available for allotment at Westfield.
- 2) Based on the location of the existing tower.

Working Arrangement for the Allotment and Assignment of FM Broadcasting Channels under the Agreement between the Government of Canada and the Government of the United States of America relating to the FM Broadcasting Service ("The Agreement") to three Canadian allotments: Channel 266B, Fort Erie, Ontario³; Channel 264C1, Toronto, Ontario; and Channel 266A, St. Catharines, Ontario. Therefore, CME respectfully requests that this proposal be coordinated with Canada as a specially negotiated shortspaced allotment.

Compliance with The Working Arrangement for the Allotment and Assignment of FM Broadcasting Channels Under the Agreement Between the Government of Canada and the Government of the United States of America Relating to the FM Broadcasting Service

3. CME proposes that Channel 265A be limited to a maximum effective radiated power of 4.8 kilowatts at 100.0 meters height above average terrain (HAAT). Based on this limitation toward the Canadian channels, there will be no interference delivered to any Canadian channel over international land area, as indicated on Exhibit #2. The protected contours of the Canadian facilities, based on the maximum reference distance for each, are depicted. The corresponding interfering contour from the Channel 265A allotment site does not cross onto land in Canada and, therefore, does not cause interference to the Canadian facilities over land.⁴

4. Exhibit #3 shows the protected contour of the proposed Channel 265A allotment at Westfield, New York, based on the limited power of 4.8 kilowatts at 100.0 meters HAAT and the interfering contours of the Canadian facilities. As noted, there is no overlap of the protected and

3) Two different allocation sites are indicated in the database; both are considered herein.

4) The interfering contour does cross over the protected contour of the Fort Erie, Ontario channels over Lake Erie, which is an unpopulated area.

interfering contours over land area in the United States by the Toronto or St. Catharines facilities. The Fort Erie channels do have overlap of their interfering contours with the protected contour of the Westfield, New York channel. However, the interference does not extend into the proposed community of license. All contours are reference distances without consideration of terrain. Based on this data, it is believed that the proposed allotment of Channel 265A meets the requirements of the Agreement, and CME respectfully requests that the Commission coordinate this proposal with Canada as a Specially Negotiated Shortspaced allotment as a limited facility with 4.8 kilowatts at 100.0 meters HAAT toward the Canadian channels.

Domestic Allocation Review

5. Channel 265A, from the proposed allocation reference site, meets the Commission's minimum distance separation requirements to all domestic facilities, as indicated on Exhibit #1. Based on the proposed maximum effective radiated power of 4.8 kilowatts at 100.0 meters HAAT from the allocation reference site, Channel 265A would place a theoretical 70 dBu (non-terrain impacted) signal over 100% of the community of Westfield, New York, as shown on Exhibit #4.⁵ Further, there is a tower located at the allocation site; as such, the site is suitable for tower construction. Therefore, this proposal meets the Commission's domestic allocation criteria.

6. Therefore, CME proposes the following change to §73.202(b) of the rules:

Westfield, New York

Present	Proposed
None	265A

5) This is the international power limitation toward the community of license.

Public Interests

7. The allotment of Channel 265A to Westfield, New York will provide the community with its first locally licensed channel. A maximum Class A facility, based on the international limitation of 4.8 kilowatts at 100.0 meters, from the proposed reference site, will provide a 60 dBu contour to 41,129 persons in 2,273.3 square kilometers.⁶

8. The foregoing technical statement was prepared on behalf of Connoisseur Media of Erie, LLC by Graham Brock, Inc., its Technical Consultants. All information contained herein is true and accurate to the best of our belief and knowledge. All data relating to FM channels and facilities was extracted from the CDBS database on the date indicated on the spacing study. We assume no liability for errors or omissions in that database which may be adverse to the information contained herein.

6) Assuming uniform terrain.

Call Lat.	Channel Lng.	Location Ant	Power	Azi HAAT	Dist	FCC	Margin
AD265	AD265 265A 42 18 51.0	Westfield 79 37 04.0	NY	0.0 6.000 kW	0.0 100 M	115.0	-115.0
	Connoisseur Media of Erie, LLC > Proposed allotment						
* WRKT	LIC-D 265B1 42 11 51.0	North East 79 45 10.0	PA DCN	220.6 25.000 kW	17.1 100 M	143.0	-125.9
	Connoisseur Media of Erie, LLC BLH-19950828KA > To Channel 285B1 per one-step application						
+ AL9012	AL 266B 42 53 52.0	Fort Erie 78 57 27.0	ON	39.6 50.000 kW	84.5 150 M	137.0	-52.5
+ 4024	PRO 266B 42 54 00.0	Fort Erie 78 57 09.0	HN	39.7 50.000 kW	84.9 77 M	137.0	-52.1
+ R43105	ADD 264C1 43 38 33.0	Toronto 79 23 15.0	ON C	7.1 100.000 kW	148.7 299 M	168.0	-19.3
+ AL8972	AL 266A 43 08 30.0	St Catharines 79 14 12.0	ON	18.6 6.000 kW	97.1 100 M	98.0	-0.9
CHINFM	OPE 264B 43 38 33.0	Toronto 79 23 15.0	ON CN	7.1 4.000 kW	148.7 421 M	137.0	11.7
AL8636	AL 265B 43 53 00.0	Wingham 81 19 00.0	ON	322.2 50.000 kW	222.5 150 M	210.0	12.5
R29542	ADD 265B 43 42 03.0	Goderich 81 38 05.0	ON	313.9 50.000 kW	225.3 150 M	210.0	15.3
R43100	ADD 265B 44 01 04.0	Wingham 81 11 46.0	ON	326.5 50.000 kW	228.6 150 M	210.0	18.6
WGYT	LIC 262B 41 37 53.0	Meadville 80 10 37.0	PA CN	211.5 20.000 kW	88.9 179 M	69.0	19.9
	Forever Broadcasting, LLC BLH-19851119KD						
* Note :	WRKT is not considered an impediment to this request based on its contingent request to move to Channel 285B1 at North East, Pennsylvania.						
+ Note :	This shortage is requested to be addressed through a specially negotiated shortspaced allotment with Canada.						

Graham Brock, Inc. - Broadcast Technical Consultants

AD265 Proposed
Westfield, New York
Latitude: 42-18-51 N
Longitude: 079-37-04 W
ERP: 4.80 kW
Channel: 265A
Frequency: 100.9 MHz
AMSL Height: 380.48 m
Horiz. Pattern: Omni
Prop Model: None

St Catharines, ON
AL-8972
Latitude: 43-08-30 N
Longitude: 079-14-12 W
ERP: 6.00 kW
Channel: 266B
Frequency: 101.1 MHz
AMSL Height: 231.78 m
Horiz. Pattern: Omni
Prop Model: None

St. Catharines ON 54 dBu (50/50) (38.0 km)

Fort Erie , ON
AL-9012
Latitude: 42-53-52 N
Longitude: 078-57-27 W
ERP: 50.00 kW
Channel: 266B
Frequency: 101.1 MHz
AMSL Height: 327.65 m
Horiz. Pattern: Omni
Prop Model: None

Fort Erie, ON
4024
Latitude: 42-54-00 N
Longitude: 078-57-09 W
ERP: 50.00 kW
Channel: 266B
Frequency: 101.1 MHz
AMSL Height: 327.82 m
Horiz. Pattern: Omni
Prop Model: None

Toronto ON 54 dBu (50/50) (86 km)

Toronto, ON
R43105
Latitude: 43-38-33 N
Longitude: 079-23-15 W
ERP: 100.00 kW
Channel: 264C1
Frequency: 100.7 MHz
AMSL Height: 401.56 m
Horiz. Pattern: Omni
Prop Model: None

Fort Erie, ON 54 dBu (50/50) (65 km)

Westfield, NY 48 dBu (50/10) (57.0 km)

EXHIBIT #2
PETITION FOR RULE MAKING
CONNOISSEUR MEDIA OF ERIE, LLC
NEW FM STATION
CH 265A - 100.9 MHz
WESTFIELD, NEW YORK
May 2011

Scale 1:1,000,000
0 10 20 30 km

Graham Brock, Inc. - Broadcast Technical Consultants

AD265 Proposed
Westfield, New York
Latitude: 42-18-51 N
Longitude: 079-37-04 W
ERP: 4.80 kW
Channel: 265A
Frequency: 100.9 MHz
AMSL Height: 380.48 m
Horiz. Pattern: Omni
Prop Model: None

St Catharines, ON
AL-8972
Latitude: 43-08-30 N
Longitude: 079-14-12 W
ERP: 6.00 kW
Channel: 266B
Frequency: 101.1 MHz
AMSL Height: 231.78 m
Horiz. Pattern: Omni
Prop Model: None

Fort Erie, ON
AL-9012
Latitude: 42-53-52 N
Longitude: 078-57-27 W
ERP: 50.00 kW
Channel: 266B
Frequency: 101.1 MHz
AMSL Height: 327.65 m
Horiz. Pattern: Omni
Prop Model: None

Fort Erie, ON
4024
Latitude: 42-54-00 N
Longitude: 078-57-09 W
ERP: 50.00 kW
Channel: 266B
Frequency: 101.1 MHz
AMSL Height: 327.82 m
Horiz. Pattern: Omni
Prop Model: None

Toronto, ON
R43105
Latitude: 43-38-33 N
Longitude: 079-23-15 W
ERP: 100.00 kW
Channel: 264C1
Frequency: 100.7 MHz
AMSL Height: 401.56 m
Horiz. Pattern: Omni
Prop Model: None

Westfield, NY 60 dBu (50/50) (26.9 km)

St. Catharines ON 54 dBu (50/10) (43.7 km)

Toronto ON 54 dBu (50/10) (105.1 km)

Fort Erie, ON 54 dBu (50/10) (78.1 km)

Scale 1:1,000,000
0 10 20 30 km

EXHIBIT #3
PETITION FOR RULE MAKING
CONNOISSEUR MEDIA OF ERIE, LLC
NEW FM STATION
CH 265A - 100.9 MHz
WESTFIELD, NEW YORK
May 2011

AD265 Proposed
Westfield, New York
Latitude: 42-18-51 N
Longitude: 079-37-04 W
ERP: 4.80 kW
Channel: 265A
Frequency: 100.9 MHz
AMSL Height: 380.48 m
Horiz. Pattern: Omni
Prop Model: None

Graham Brock, Inc. - Broadcast Technical Consultants

70 dBu (4.8 kw @ 100 meters) (radius)

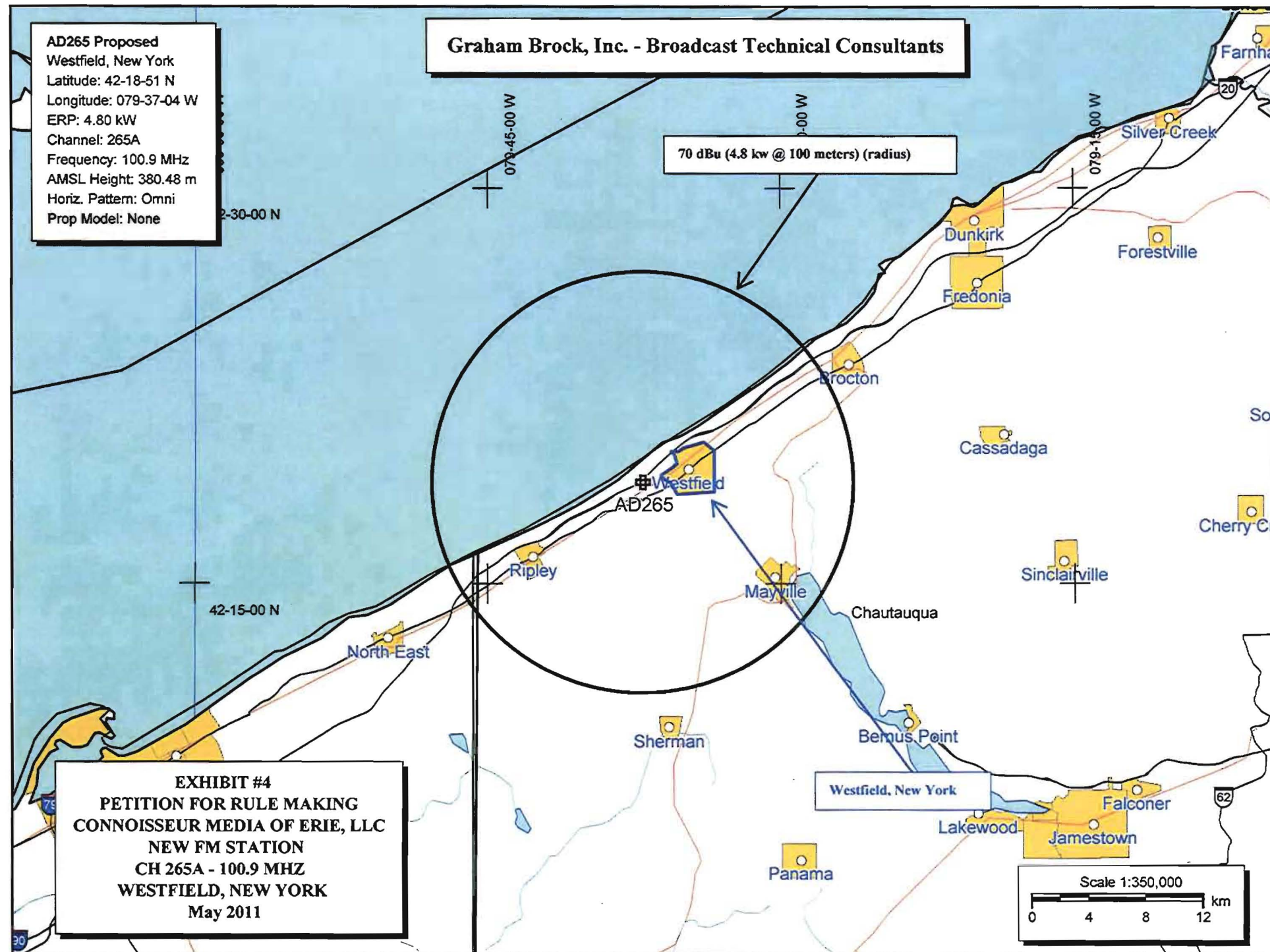
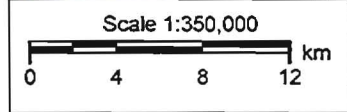


EXHIBIT #4
PETITION FOR RULE MAKING
CONNOISSEUR MEDIA OF ERIE, LLC
NEW FM STATION
CH 265A - 100.9 MHZ
WESTFIELD, NEW YORK
May 2011



AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT

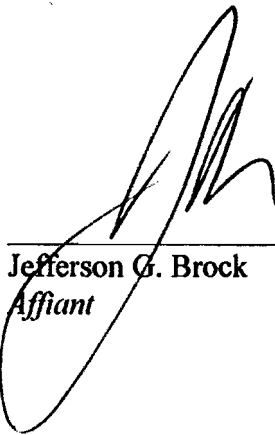
State of Georgia)
St. Simons Island) ss:
County of Glynn)

JEFFERSON G. BROCK, being duly sworn, deposes and says that he is an officer of Graham Brock, Inc. Graham Brock has been engaged by Connoisseur Media of Erie, LLC to prepare the attached Technical Exhibit.

His qualifications are a matter of record before the Federal Communications Commission. He has been active in Broadcast Engineering since 1979.

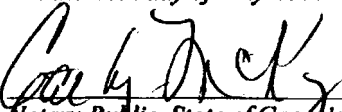
The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

This the 20th day of May 2011.



Jefferson G. Brock
Affiant

*Sworn to and subscribed before me
this the 20th day of May 2011*



Notary Public, State of Georgia
My Commission Expires: March 14, 2015

CERTIFICATE OF SERVICE

I, Rhea Lytle, a Secretary in the law firm of Davis Wright Tremaine LLP, hereby certify that on this 3rd day of June 2011, I caused a copy of the foregoing “**PETITION FOR RULEMAKING**” to be hand delivered to the following:

Nazifa Sawez
Assistant Chief, Audio Division
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554



Rhea Lytle